

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

CORNELIUS WILSON #1251526

§

v.

§

CIVIL ACTION NO. 6:14cv74

DMS DUL

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Cornelius Wilson, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Wilson's statement of claim reads, in its entirety, as follows: "I went to sick call and DMS Dul said diphenhydramine 50 mg capsules is not a sinus medication." The Magistrate Judge ordered Wilson to pay the statutory filing fee or to submit an application for leave to proceed *in forma pauperis*, and also to file an amended complaint setting out a short and plain statement of his claim. Wilson did not comply with either of these orders.

The Magistrate Judge thereupon issued a Report recommending that the lawsuit be dismissed. After noting that Wilson had failed to comply with the orders, subjecting his lawsuit to dismissal under Fed. R. Civ. P. 41(b), the Magistrate Judge determined that Wilson's lawsuit was frivolous on its face because he had not shown what injury he suffered from the fact of being told that diphenhydramine is not a sinus medication. Nor did Wilson show the deprivation of a right secured by the Constitution or laws of the United States. The Magistrate Judge therefore recommended that

the lawsuit be dismissed as frivolous and for failure to state a claim upon which relief could be granted, but that in the interest of justice, such dismissal should be without prejudice.

Wilson received a copy of the Magistrate Judge's Report but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

**ORDERED** that the Report of the Magistrate Judge (docket no. 8) is hereby **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled civil action be and hereby is **DISMISSED WITHOUT PREJUDICE** as frivolous and for failure to state a claim upon which relief may be granted. 28 U.S.C. §1915A. It is further

**ORDERED** that the Clerk shall send a copy of this order to the Administrator of the Three Strikes List for the Eastern District of Texas. Finally, it is

**ORDERED** that any and all motions which may be pending in this action are hereby  
**DENIED**.

**It is SO ORDERED.**

SIGNED this 10th day of September, 2014.



MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE